

REMARKS

STATUS OF THE CLAIMS

Claims 1 and 3-25 are pending in this application and stand rejected. Claim 2 is canceled by this amendment. The Examiner has objected to claims 3-7, 11, 12, 14, 15, 17-20 and 22-25. Claims 9, 26, and 27 are withdrawn from consideration. Applicants acknowledge the Examiner's addition of claim 9 to Group II, which was not elected in Applicants' Response to the Restriction Requirement filed on February 15, 2005.

Claims 1, 3, 5, 11, 13-15, 17-19, 20 and 22-24 are currently amended. Claim 1 has been amended to require that R_3 is a pyridine of formula II. Claim 5 has been amended to require that the ring containing B and D of formula IV defines a pyridine. Claims 14 and 20 have been amended to require that R_3 is a pyridine substituted only with $-NR^{10}R^{11}$. Claims 11, 13, 17-19 and 22-24 have been amended in light of the recitation in claim 1 that R^3 is a pyridine of formula II. Support for the amendments to claims 1, 5, 14 and 20 can be found at least at p. 30, lines 16-18, of the specification. In addition, formula I in claim 1 has been amended to recite a structure having substituents R_1 - R_5 on the phenyl ring, correcting an obvious typographical error. Support for this amendment can be found at least at p. 4, line 9, of the specification.

Dependent claim 3 has been amended to recite a compound of formula III as given on p. 6, line 18, to p. 7, line 1, of the specification, correcting an obvious typographical error. Dependent claim 15 has been amended to require R_1 to be a group of formula II, with variables D, B, Y, and n as defined in claim 15. Support for this amendment can be found at least at p. 4, line 14, to p. 5, line 1 of the specification.

Accordingly, Applicants respectfully submit that no new matter has been added by these amendments.

REJECTION UNDER 35 U.S.C. § 112, ¶2

The Examiner has rejected claims 1-8 and 10-25 under 35 U.S.C. § 112, ¶2 as being indefinite in the recitation of the variable R₅ in formula I. (*Office Action* at p. 4.)

As discussed above, Applicants have amended an obvious typographical error in the structure of formula I in claim 1 so that variable R₅ is now present on the phenyl ring. Applicants believe that this amendment renders the rejected claims definite. Accordingly, Applicants respectfully request withdrawal of this rejection.

REJECTION UNDER 35 U.S.C. § 102(b)

The Examiner has rejected claims 1, 8, 10, 13, 16, and 21 (all in part) under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,900,751 ("Cox"). (*Id.* at pp. 4-5.) According to the Examiner, Cox teaches "pyridyl-phenyl-sulfanyl-heteroaryl compounds that read on those instantly claimed," citing Cox's Examples 13(a), 14(a-j)(i), 15(a), 16(b), 18(b), 19(a), and 21(a) to support the rejection. (*Id.*)

Applicants respectfully disagree with the Examiner's assertion. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (M.P.E.P. § 2131.)

Cox discloses a genus comprising benzimidazoles, benzoxazoles and benzthiazoles that are linked by a -S(O)_p-(CH₂)_y- group to a ring A, where p and y are each 0 or 1. (Cox at col. 1, line 18, to col. 3, line 28.) Ring A is substituted at least with a W group, which is a nitrogen-containing substituent. (*Id.* at col. 1, lines 21-43.)

However, the specific Examples in Cox cited by the Examiner (i.e., 13(a), 14(a-j)(i), 15(a), 16(b), 18(b), 19(a), 21(a)) do not fall within the structure of formula I of claim 1, as currently amended. Examples 13(a), 14(a-j)(i), 15(a), 16(b), 18(b), 19(a), and 21(a) fall outside the scope of the formula I genus because they do not fall within any of the recited groups for R¹-R⁵.

Nonetheless, to expedite prosecution, Applicants have amended claim 1 to recite R³ to be a pyridine of formula II. Support for this amendment can be found in the specification at least at p. 30, lines 16-18. No new matter has been added by this amendment.

Accordingly, Applicants respectfully request withdrawal of this rejection.

OBJECTION UNDER 37 C.F.R. § 1.75

The Examiner has objected to claims 2-7, 11, 12, 14, 15, 17-20, and 22-25 for being dependent on rejected base claims. (*Office Action* at p. 5.) Applicants respectfully submit that the rejected claims have been placed in condition for allowance by this response. Accordingly, Applicants respectfully request withdrawal of this objection.

CONCLUSION


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 5, 2005

By: 
Maria T. Bautista
Reg. No. 52,516